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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 18.10.2006.

Sunil Kumar .... Appellant.

vs

Municipal Council, Jind, through its President .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.R.N.Lohan,Advocate,for the appellant.
Mr.Jagdish Manchanda,Advocate,for the respondent.

Kiran Anand Lall, J.

The facts which are not in dispute are that the Municipal Council, Jind, is the owner of Shop No.22, situate at Gohana Road, Jind. The appellant had taken this shop, on lease, on 2.5.1996, on a monthly rent of Rs.450/-. Agreement-deed, Ex.P6, was executed between the parties, and the appellant took possession of the shop, on the same day. He has been, thereafter, continuing in its possession but had never paid any rent thereof. The Municipal Council served a notice dated 10.5.1999, calling upon him to make payment of rent, for the period starting from June 1997 to May 1999 viz. Rs.12150/-, along with penalty, etc. Instead of paying the arrears, the appellant filed a civil suit, claiming declaration that the respondent-Municipal Council is not entitled to recover rent of the 'shop-plot', from him, till it pays/ adjusts the amount (along with interest @ 18% per annum), spent by him for constructing a shop on the plot. He also claimed the relief of permanent injunction for restraining the respondent from recovering the amount of rent from him due to non-fulfilment of condition no.2 of the lease-agreement.

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The respondent denied that the appellant had raised any construction at the spot. It was also pleaded that the appellant, infact, had no right to raise any construction, in the shop, taken by him on lease. His locus-standi to file the declaratory suit was also challenged and so was the maintainability of the suit in the form it was filed.

After framing issues arising out of the pleadings of the parties and completing the trial, the trial court answered all the issues against the appellant and dismissed the suit.

In first appeal, too, the appellant could not succeed. The appellate court affirmed the verdict of the trial court. The appellant, thereafter, came up in regular second appeal, to this court.

At the outset, it may be mentioned that no question of law, much less a substantial one, is involved in this appeal. Otherwise too, as per stipulation 7 of the lease-agreement, the appellant could effect only minor repairs in the shop, and that, too, at his own cost. He had no right to raise any further construction, as such, in the shop. In this connection, it may be mentioned that though, as per the lease-agreement, the property taken on lease was a shop, the appellant, in an attempt to confuse the facts, described it as a plot, in the plaint.

No doubt, as per stipulation 2 of the lease-deed, he was authorised to install a shutter and lay lintel of its roof. But, both courts have found that there is nothing on record to indicate that either of these two jobs was done by him, nor any bill/ receipt in respect of any work done or amount spent in this regard, was produced in evidence.

Learned counsel for the appellant contends that, as per stipulation 2 of the lease-agreement, obligation of the appellant to pay rent

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of the shop was to arise after respondent would obtain a Completion certificate, and since this condition was not fulfilled, the appellant could not be asked to pay any rent. The courts below have rightly concluded that since the appellant has remained in occupation of the shop for so many years and has utilised the property of the respondent, he is obliged to pay rent thereof, and he cannot hold it back due to inaction on the part of the respondent, in obtaining the formal completion certificate. Here, it may also be taken note of, that the appellant did not represent, even once, to the respondent that the required Completion certificate may be obtained.

In view of the above facts, the trial court and the first appellate court have rightly held that the appellant who has been utilising the property of the respondent since the year 1996, without payment of any amount as rent, etc., is not entitled to seek a declaration or prohibitory injunction which may dis-entitle the respondent from recovering the arrears of rent from him.

The appeal is, thus, absolutely without any merit and deserves to be dismissed. Ordered accordingly.

18.10.2006. (Kiran Anand Lall)
vs. Judge.